

20031015
.02945

CLARK COUNTY, NEVADA
FRANCES DEANE, RECORDER

RECORDED AT THE REQUEST OF:
PUBLIC WORKS CLARK COUNTY

10-15-2003 14:02 DGI

OFFICIAL RECORDS

BOOK/INSTR: 20031015-02945

PAGE COUNT: 191

FEE:
RPTT:

.00
.00

When Recorded, Return To:

John O. Swendseid
Swendseid & Stern
317 South Sixth Street
Las Vegas, NV 89101

Requested by
Clark County
Public Works

Exhibit H

191

DISTRICT FINANCING AGREEMENT

FOR

SPECIAL IMPROVEMENT DISTRICT NO. 142

(MOUNTAIN'S EDGE)

BETWEEN

CLARK COUNTY, NEVADA

AND

MOUNTAINS EDGE, LLC

RECORDER'S MEMO
POSSIBLE POOR RECORD DUE TO
QUALITY OF ORIGINAL DOCUMENT

TABLE OF CONTENTS

PAGE NO.

ARTICLE 1. CONSTRUCTION.....	2
1.1 Description of Tasks.....	2
A. Plans and Engineering.....	2
B. Construction.....	3
C. Transfer Of Title To Property.....	3
D. Warranty of Workmanship and Materials.....	4
E. Work Specifications.....	5
F. Compliance With Law.....	5
G. Cost Estimates; Bonds; Guarantee of Work.....	6
H. Payments for Construction Project.....	7
I. Default In Construction Obligations Of Developer.....	7
J. Cost Overruns.....	8
K. Cost Underruns.....	8
1.2 Oversizing.....	9
A. Water Line Oversizing.....	9
B. Sewer Line Oversizing.....	9
1.3 Incidental Expenses.....	9
A. Developer Incidental Expenses.....	9
B. County Incidental Expenses.....	10
C. Excess.....	10
1.4 Method of Payment.....	10
1.5 County Authorized to Pay.....	10
ARTICLE 2. ASSESSMENTS.....	11
2.1 Procedure.....	11
2.2 Financing.....	11
2.3 Assessed Property, Assessment Roll.....	11
2.4 Assessment Installments.....	11
2.5 Interest Rate.....	11
2.6 Interest Rate; Installment Due Dates.....	12
2.7 Bond Reserve.....	12
A. Bond Reserve Defined.....	12
B. Application Of Interest Income and Other Excess Amounts.....	12
C. Delinquent Assessment Reimbursement.....	13
D. Refunds.....	13
E. Use For Other Purposes.....	14
2.8 Waiver.....	14
ARTICLE 3. MISCELLANEOUS.....	15
3.1 Federal Tax Covenant.....	15
3.2 County Documents.....	15
3.3 Permits.....	15
3.4 Permitted Investments.....	16
3.5 Indemnification; Insurance.....	16
A. Indemnification To County.....	16

B.	Defense of Suits.	16
C.	Exception.	17
D.	Survival.	17
E.	Insurance.	17
3.6	No Third-Party Beneficiaries.	18
3.7	No Guarantee of Water or Sewer Capacity.....	18
3.8	Continuing Disclosure.	18
3.9	Successors; Assignments.	18
3.10	Inspection of Books.	18
3.11	Entire Agreement.	18
3.12	Further Assurances.....	19
3.13	Obligations of Developer.	19
3.14	Notices.	19
3.15	No Waivers.	20
3.16	Attorneys' Fees.	20
3.17	Severability.	20
3.18	Governing Law.	20
3.19	No County Obligation.....	20
3.20	Termination Date.	21
3.21	Counterparts.....	21
3.22	Recordation.	21
3.23	Conveyance Restriction.	21
3.24	Disclosure to Transferee.	21
3.25	Execution Authorization.....	22
3.26	Construction; Time.	22

EXHIBITS

Developer Property Description	A
Subproject Description, Purchase Prices and Estimated Completion Dates.....	B
List of Plans	C
Supplemental and Additional Conditions and Specifications.....	D
Prevailing Wages	E
Developer Payment Request Form	F
List of County Documents	G
Assessment Roll.....	H
Permits Required.....	I
Disclosure Statement to Property Buyers	J
Description of Property in District.....	K

This District Financing Agreement (the "Agreement") between **CLARK COUNTY, NEVADA** (the "County"), a political subdivision of the State of Nevada (the "State"), and **MOUNTAINS EDGE, LLC**, a Nevada limited liability company (the "Developer"), is made and entered into as of October 7, 2003.

WITNESSETH:

WHEREAS, pursuant to Nevada Revised Statutes ("NRS") §271.710, the Board of County Commissioners of the County (the "Board") may enter into written agreements with the owners of all property within a proposed special assessment or improvement district containing the provisions stated herein; and

WHEREAS, the Developer represents and warrants that (i) it is the sole legal owner of certain property to be assessed within the proposed Clark County, Nevada, Special Improvement District No. 142 (Mountain's Edge) (the "District"), (ii) a true and correct legal description of such property (the "Property") is attached hereto as Exhibit A; and (iii) a true and correct legal description of all property to be included in the District is attached hereto as Exhibit K; and

WHEREAS, the Developer has signed and filed a petition with the County to form the District in accordance with the County's Developer Special Improvement District Guidelines (the "Petition"); and

WHEREAS, the Developer proposes to construct and acquire certain improvements within the District, including street, park and certain governmentally-owned utility improvements to serve property located in the District, and to transfer those improvements to the County in accordance with the terms and provisions provided herein, a description of which improvements is attached hereto as Exhibit B (such improvements, including the land on which they are located and all appurtenances is herein defined as the "Project"); and

WHEREAS, portions of the Developer's Property are required for the Project (the "Project Property"), including real property to be dedicated in fee simple and easements; and

WHEREAS, the Developer agrees that the County may create the District, levy the assessments and, for all other purposes relating to the District, proceed pursuant to the provisions of NRS 271.710; and

WHEREAS, the parties hereto propose to finance the Project by sale of bonds ("Bonds") pursuant to NRS Chapter 271, including NRS 271.710 through 271.730.

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS AND CONDITIONS CONTAINED HEREIN, THE PARTIES HERETO AGREE AS FOLLOWS:

ARTICLE 1. CONSTRUCTION.

1.1 Description of Tasks.

A. Plans and Engineering.

1. Full and detailed plans and specifications for the Project have heretofore been prepared for the Project by the Developer and filed with the County Clerk and the Department of Public Works. A list of those plans are attached as Exhibit C.

2. The Developer shall cause all necessary additional engineering and construction plans and specifications, including environmental reports, drainage studies or analyses and estimates, to be prepared for the Project for review and approval by the County and shall perform all other preliminaries needed in order to commence construction of the Project, including making of required surveys, doing engineering and design work, and obtaining all required permits, licenses or other governmental or utility approvals necessary. Any such review or approval by the County shall not limit any rights the County may have against any person for defective or negligent design.

3. The County may contract for the engineering services of one or more Nevada Registered Professional Civil Engineers, as selected by the County, in accordance with NRS, to review the engineering design for the Project prepared as provided in paragraph 1 of this subsection A as are necessary for the Project, to provide assessment engineering services on the Project, including an assessment engineer's report (the "Engineer's Report"), to provide inspection services and to provide to the County assistance in verifying proper documentation for all payment requests and the proper amount to pay the Developer in connection with those requests. The Engineer's Report and other reports and documents prepared by the engineers may be supplemented and amended without amending this Agreement.

4. The Developer shall be responsible for payment of all costs described in paragraphs 1 through 3 of this subsection A which are incurred or due and payable prior to the time Bonds are issued, subject to obtaining reimbursements as

described herein or in the Deposit and Reimbursement Agreement, dated as of October 15, 2002 (the "Deposit Agreement") between the County and the Developer, if Bonds are issued.

B. Construction. The Project shall consist of the Subprojects listed in Exhibit B. The Developer shall construct the Project in accordance with the full and detailed descriptions, plans and specifications therefor, which are listed on Exhibit C hereto. All contractors and subcontractors selected by the Developer for the Project must be licensed and bonded, if required by State licensing laws, in accordance with the laws of the State and be acceptable to the County.

C. Transfer Of Title To Property.

1. Prior to payment of the cost of any Subproject, the Developer shall transfer (i) to the County in the case of all improvements other than water and sanitary sewer improvements and certain street improvements described in clause (iv), (ii) to the Las Vegas Valley Water District ("LVVWD") in the case of water improvements, (iii) to Clark County Water Reclamation District ("CCWRD") in the case of sanitary sewer improvements or (iv) to the Nevada Department of Transportation ("NDOT") in the case of certain street improvements (the County, LVVWD, CCWRD and NDOT, as applicable with respect to a particular Subproject, is referred to as the "Applicable Government"), either fee title or, if acceptable to the Applicable Government, an easement or easements, as the case may be (separately or together, a "property interest"), in a form acceptable to the Applicable Government for the real property on which each Subproject is located, except for those portions of the real property on which a Subproject is located which are already owned in fee by the Applicable Government or for which the Applicable Government already has the necessary easements or for which the Applicable Government has obtained a right of occupancy pursuant to an action for condemnation filed in the court of applicable jurisdiction. The Developer warrants at the time of the transfers of Subprojects and property interests to the Applicable Government that the Developer has title sufficient to convey the property interest being conveyed and that such Subproject and said property interest are not subject to any easement, mortgage, security interest, mechanics lien or any other encumbrance, except as shall be approved by the Applicable Government and shall be shown on a preliminary title report or pro

3

forma title policy (each, a "Title Report") with respect thereto, which Title Report shall be delivered to the Applicable Government for its review and approval at least 20 days prior to the transfer of the property interest to the Applicable Government. In the event the Applicable Government does not approve any encumbrance shown on the Title Report, the County shall not be obligated to pay for such Subproject until the Developer has cured all objections to the property interest to the satisfaction of the Applicable Government.

2. Prior to the County's making payment for any Subproject, the Developer shall transfer to the Applicable Government title to all improvements constructed as a part of the Subproject and provide to the County complete and legally effective releases or waivers (satisfactory to the County and the Applicable Government) of mechanics', materialmen's, or other liens arising out of or filed (or which could arise out of or be filed) in connection with that Subproject. If any subcontractor or supplier fails to furnish such a release in full, the Developer may furnish a bond or other collateral satisfactory to the County and the Applicable Government to indemnify and defend the County and the Applicable Government against any lien, and the County at the County's discretion may make payment of 90% of the amount due with respect to that Subproject and retain 10% of the payment price until all potential liens have lapsed without filing, written waiver has been obtained therefor, or such liens have otherwise been removed from the property.

3. The Developer shall defend the Applicable Government's title to or easement in the property being transferred against any claim of encumbrance whatsoever arising by or through the Developer or any of its predecessors in title or which is caused or created by the Developer, including any mechanics' liens asserted in connection with the construction of the Project or the Developer's development of its Property in the District. The obligations of the Developer in this paragraph 3 shall survive the termination of this Agreement.

D. Warranty of Workmanship and Materials. The Developer at the time of transfer shall warrant to the County and the Applicable Government that the improvements have been constructed in accordance with the plans and specifications therefor which are listed on Exhibit C hereof, and all amendments and addenda thereto which have been approved by the

County and the Applicable Government. The County shall not be required to make a payment for any Subproject unless final construction drawings and specifications for that Subproject have been submitted to the County and the County and Applicable Government, in their sole discretion, have approved such final construction drawings and specifications and any amendments and addenda thereto, and unless that Subproject is constructed in strict accordance with such approved final construction drawings and specifications and any approved amendments and addenda thereto.

E. **Work Specifications.** In addition to the plans and specifications described in Exhibit C, the construction work performed pursuant to this Agreement is subject to the following additional specifications:

1. The current edition of the Uniform Standard Specifications for Public Works' Construction Off-Site Improvements, Clark County Area, Nevada, as modified by the Developer with the County's approval (the "Standard Specifications") and the Uniform Standard Drawing for Public Works' Construction, Clark County Area, Nevada, as modified by the Developer with the County's approval (the "Standard Drawings"). (Standard Specifications and Standard Drawings are on file in the office of the Department of Public Works and may be examined there without charge. The Standard Specifications may be purchased from the Regional Transportation Commission, 600 South Grand Central Parkway, Suite 350, Las Vegas, Nevada 89106);

2. The Supplemental Conditions which are attached hereto as Exhibit D.

F. **Compliance With Law.** Pursuant to NRS § 271.710(1), the Board need not comply with the provisions of any law requiring public bidding or otherwise imposing requirements on public contracts, projects, works or improvements, including, without limitation, chapters 332, 338 and 339 of NRS except that NRS §§ 338.010 to 338.090, inclusive, shall apply to any construction work to be performed under any contract relating to the District after the execution of this Agreement. A copy of the prevailing wage acts for public works in the State for the County is attached as Exhibit E to this Agreement. The Developer agrees that neither it nor any subcontractor will pay less than the prevailing wage for any work performed under this Agreement after the execution of this Agreement. The Developer is responsible for providing the County and the State Labor Commission with all information required by NRS 338.010 to

NRS 338.090, and is otherwise responsible for all compliance requirements set forth in those provisions of NRS.

G. Cost Estimates; Bonds; Guarantee of Work.

1. At the time of commencement of construction of any Subproject, the Developer shall furnish the County with an updated estimate of the cost of constructing such Subproject, in form and substance satisfactory to the County. In addition, at the time of any contract or change orders is executed in connection with the construction of any Subproject, if, as result thereof, the estimate of the cost of the Subproject previously furnished increases, the Developer shall furnish the County with another updated estimate of such cost, in form and substance satisfactory to the County. If the updated estimated cost of that Subproject exceeds the smaller of (i) the price of that Subproject as shown in Exhibit B plus any allocation of Bond proceeds available therefor because of a cost underrun on another Subproject or (ii) the amount of the proceeds of the Bonds available to pay the cost of that completed Subproject, as reasonably determined by the County taking into account any allocation of such Bond proceeds to other Subprojects and other costs, the Developer shall furnish to the County a performance bond and a payment bond in an amount equal to the amount of such excess at the time such estimate is furnished to the County. Those bonds shall remain in effect until acceptance of that Subproject by the Applicable Government.

2. The Developer shall remedy any defects in any Subproject and pay for any damage to other work resulting therefrom, which appears within one year of the transfer of the Subproject to the Applicable Government or such longer period as is required by the Applicable Government. Guarantee bonds provided by the Developer or its contractors in the amount of 100% of the price to be paid by the County for each Subproject shall be provided to the County or the Applicable Government at the time of acceptance of a Subproject which will be in effect for not less than one year after all Subprojects in the Project have been accepted, i.e., until one year after the final completion and acceptance of the Subproject which is accepted by the County on the latest date (the "Final Completion Date"). The guarantee bonds must guarantee quality of the workmanship and materials used in the Project and that the work meets the plans and specifications and warranties the quality thereof.

H. Payments for Construction Project. The County shall pay to the Developer for each Subproject 100% of the purchase price of that Subproject as is listed in Exhibit B at the time of the later of acceptance of that Subproject by the Applicable Government or transfer of title to that Subproject to the Applicable Government, provided that the County shall be obligated to pay such purchase price solely from the available proceeds of the Bonds to be hereafter issued by the County, if any, and at no time shall the aggregate amount paid by the County to the Developer pursuant to this Agreement exceed the reasonable actual costs to the Developer of the Subprojects theretofore accepted and then being accepted, as determined by the County with reference to its prior experience with similar types of construction or otherwise. If the reasonable actual costs of a Subproject as approved by the County exceeds the price therefor as listed in Exhibit B, the County shall not be obligated to pay such difference unless and only to the extent that Bond proceeds are available to pay such excess because the Incidental Expenses (as defined in Section 1.3) are less than the aggregate stated in Section 1.3, or the price paid for another Subproject that has already been completed, accepted and paid for by the County is less than the price listed for that Subproject as listed on Exhibit B or any combination of such factors. The County is not obligated to expend any County money except available proceeds of Bonds.

I. Default In Construction Obligations Of Developer. In the event the Developer does not build any Subproject in accordance with the approved plans and specifications or is late in completing any Subproject, the County may, at its option, proceed to build, complete, or rebuild as necessary that Subproject so that when completed that Subproject will be constructed in accordance with the plans and specifications. The County may apply the proceeds of the Bonds and amounts derived from any payment, performance or guarantee bond applicable to the Project to the costs of such building, completing or rebuilding of such Subproject. If these amounts are insufficient, the County shall make demand on the Developer to pay the amount of the insufficiency and the Developer shall immediately pay the County the amount of the insufficiency. For the purpose of this Subsection I, except as provided in the succeeding sentence, the Developer will be treated as being late in completing a part of the Project if either: (i) that part of the Project has not been completed within the earlier of 12 months after a lot is sold in the District to a person who intends to use the lot for his or her residence, which lot is to be served by the incomplete improvement, or 18 months of the date a final subdivision map is recorded for any property in the District which subdivision map requires

the completion of the incomplete improvement; or (ii) that part of the Project has not been completed by the date on which completion thereof was required in any permit issued by any governmental agency (including the County) to the Developer or any other owner or developer of property in the District, taking into account any extension of time for completion granted by the permitting agency. Notwithstanding the foregoing, the Developer shall not be deemed late in completing any Subproject under clause (ii) above to the extent that construction thereof is delayed as a result of occurrences beyond the control and without the fault or negligence of the Developer, including, without limitation, fire, earthquake, flood and other out-of-the ordinary actions of the elements, enemy invasion, war, insurrection, acts of terrorism, sabotage, laws or orders of governmental, civil or military authorities, strikes, work stoppages, governmental restrictions and moratoria, riot, civil commotion and unavoidable casualty, provided that the completion date under the permit is extended. In the event the Developer is delayed by such occurrences, the time within which the Developer must complete such Subproject shall be extended by a reasonable period of time not less than the actual number of days that the Developer was delayed as a result of such occurrences, but in any event, not more than the period of time for which the completion date under the permit is extended.

J. Cost Overruns. The Developer is responsible for the payment of and agrees to pay all costs of construction which exceed the amount available for that purpose from the proceeds of Bonds. It is presently estimated by the Developer that the Developer will be required to pay approximately \$17,944,380 pursuant to this Subsection.

K. Cost Underruns. In the event all of the Project is complete and accepted and there remain unexpended proceeds of the Bonds (including interest earned on such proceeds) which were to be used for expenses in connection with the Project, and are not needed for any Project, assessment or Bond related purposes (including cost overruns on non-construction costs as provided in Section 1.3), as determined by the County, the County and the Developer may, by agreement, amend the Project to include any other Subprojects eligible for financing under Chapter 271 of NRS and the County's guidelines that benefit the property assessed in the District and such unexpended Bond proceeds may be expended on such additional Subprojects. If no such amendment is made or if after such an amendment, there still remains unexpended Bond proceeds, these unexpended proceeds shall be applied to redeem Bonds at such times as are determined by the County.

1.2 Oversizing.

A. **Water Line Oversizing.** The County shall not pay under this Agreement for any oversizing of water lines, the cost of which is to be reimbursed to the Developer by LVVWD under any agreements between LVVWD and the Developer or otherwise, and the Developer agrees not to include any such oversizing in its cost estimates or final costs for the Project or any Subproject.

B. **Sewer Line Oversizing.** The County shall not pay under this Agreement for any oversizing of sewer lines, the cost of which is to be reimbursed to the Developer by CCWRD under any agreements between CCWRD and the Developer or otherwise, and the Developer agrees not to include any such costs in its cost estimates or in final costs of the Project or any Subproject.

1.3 Incidental Expenses.

The Developer and the County shall be entitled to be reimbursed for their incidental expenses ("Incidental Expenses") as follows:

A. **Developer Incidental Expenses.** The Developer shall be entitled to be reimbursed from Bond proceeds for the actual costs of the following estimated Incidental Expenses incurred and paid by the Developer, up to an amount of not exceeding \$484,650 (unless additional amounts are available from cost underruns on particular Subprojects or the County's Incidental Expenses): appraisal and absorption study (estimated at \$34,650); legal expenses (estimated at \$250,000); and the deposit of \$200,000 made by the Developer for the County's costs. The County will, upon presentation of evidence of payment of the foregoing expenses by the Developer and approval thereof by the County, pay to the Developer the cost incurred, but only from the available proceeds of the Bonds.

B. County Incidental Expenses. The County shall be entitled to pay the following Incidental Expenses directly from the proceeds of the Bonds and the deposit of \$200,000 made by the Developer for County costs, and any other monies provided to the County by the Developer for that purpose: (1) the cost of funding a reserve fund in the amount provided in Ordinance of the County authorizing the Bonds (the "Bond Ordinance") (estimated at \$9,183,950); (2) the cost of funding fourteen months' capitalized interest (estimated at \$7,542,558); (3) the fees and expenses of the assessment engineer (estimated to be \$950,000); (4) the County's cost of issuing the Bonds, which is estimated to be \$1,653,150 and which includes the estimated fees and expenses of bond counsel (\$160,000), financial consultant (\$80,000), the estimated cost of official statement printing and mailing (\$15,000), the other costs listed in the purchase contract for the Bonds to be paid by the County including the estimated underwriter's discount (\$1,387,400 including underwriter's counsel and DTC/CUSIP fees), and the County's other actual expenses in connection with the issuance of the Bonds (estimated at \$10,750); (5) the cost of forming the District and of publications and notices (estimated at \$39,000); and (6) the estimated amount of the County's other costs of creating the District and administering the acquisition and construction of the Project, including legal expenses (\$923,600). If the deposit made by the Developer for County costs and the available Bond proceeds are not sufficient to pay the County's Incidental Expenses, the Developer shall, at the request of the County, pay the amounts needed.

C. Excess. If Incidental Expenses are less than the aggregate stated in this Section, the Bond proceeds remaining after payment of the Incidental Expenses may be used for costs of the Project.

1.4 Method of Payment. Payments made to the Developer, whether for the cost of a Subproject or for reimbursement of Incidental Expenses (as described in § 1.3.A.), shall be made only on execution of a request for such payment signed by the Developer in the form attached as Exhibit F, by check or draft made out to the party designated in and mailed as provided in the form attached as Exhibit F. Unless the County agrees to a smaller amount, the Developer agrees to not request a payment in an amount of less than \$200,000.

1.5 County Authorized to Pay. The County is authorized to directly pay all expenses listed in Section 1.3.B., without further authorization from the Developer, and shall

provide to the Developer, at its request, with a copy of any invoice received with respect to those costs, or in the case of internal costs, other evidence of those costs.

ARTICLE 2. ASSESSMENTS.

2.1 Procedure. The Developer agrees that the County may proceed to order that the Project be acquired, constructed, and improved, issue the Bonds and otherwise finance the cost of the Project and levy assessments without complying with the provisions of NRS §§ 271.305 to 271.320, inclusive, 271.330 to 271.345, inclusive, 271.380 and 271.385 and the provisions of any law requiring public bidding or otherwise imposing requirements on public contracts, projects, works or improvements including without limitation chapters 332, 338 and 339 of NRS except as otherwise specifically provided in NRS 271.710. The Developer agrees that the Board may create the District, levy assessments and for all other purposes relating to the District proceed pursuant to the provisions of NRS 271.710 and NRS 271.720.

2.2 Financing. The County agrees to proceed with the financing of the improvements by levying assessments against the property in the District and issuing Bonds in the manner described herein, and in the proposed forms of County documents, all of which are listed on Exhibit G and are on file with the County Clerk (the "County Documents"). The County has not agreed to pay the Bonds from the sources named in NRS § 271.495.

2.3 Assessed Property, Assessment Roll. The County will levy assessments against all the property in the District as provided in the ordinance levying the assessments (the "Assessment Ordinance"), and the amount of the assessments against each parcel of property in the District will be the amount listed in the assessment roll attached hereto as Exhibit H.

2.4 Assessment Installments. Pursuant to NRS § 271.405(2), the Developer hereby elects to pay the assessments against its Property in installments, with interest thereon as provided in the Assessment Ordinance. The Developer waives the right to pay the whole assessment within 30 days after the effective date of the Assessment Ordinance.

2.5 Interest Rate. The interest rate on the assessments will be a fixed interest rate which will be fixed by the County at a rate that is one percentage point above the highest interest rate on any of the Bonds. Any interest received that is not used to pay the principal and interest on the Bonds will be used to pay the reasonable administrative and other expenses of the County in connection with the Bonds, the assessments and the Project, and to the extent not so used shall be refunded to the property owners in the same manner as provided in Section 2.7.B. The

interest rate on the Bonds shall not exceed by more than three percent the Index of Twenty Bonds which was most recently published before the bids are received or the negotiated offer is accepted.

2.6 Interest Rate; Installment Due Dates. Assessment installments shall bear interest at the rate specified as provided in Section 2.5 hereof from the effective date of the Assessment Ordinance until paid in full. One assessment principal installment of \$5,000 shall be due from the Developer on June 1, 2004 and shall be credited against the assessment due on such portion of the Property as specified by the Developer. Three semi-annual interest payments shall be due on June 1, 2004, December 1, 2004 and June 1, 2005 (provided that there shall be credited against such installments of interest the amount of capitalized interest available to pay the next installment of interest on the Bonds). Thirty-six fully amortized assessment installments of principal and interest will be due semi-annually on June 1 and December 1 of each year, commencing on December 1, 2005 and ending on June 1, 2023. The County may, in connection with a refunding of the Bonds, change the assessment amortization, installment dates and payments and any other terms of the assessments permitted to be changed pursuant to NRS 271.488, in the manner provided in NRS 271.488.

2.7 Bond Reserve.

A. Bond Reserve Defined. A reserve fund (the "Bond Reserve") in the amount of the combined maximum annual principal and interest coming due on the assessments in any one year, or if smaller, such percentage thereof which equals the lesser of (i) the maximum amount of principal and interest due on the Bonds in any year or (ii) the maximum amount permitted to be funded with the proceeds of the Bonds under Section 148 of the Internal Revenue Code of 1986, as amended (the "Tax Code") (the "Minimum Reserve Requirement"), will be created with the proceeds of the Bonds. The Bond Reserve will be used as additional security for the Bonds to pay any principal and interest on the Bonds when due, if the payments of the assessment installments are insufficient for that purpose.

B. Application Of Interest Income and Other Excess Amounts. All amounts in the Bond Reserve in excess of the Minimum Reserve Requirement, derived from interest earned on amounts in the Bond Reserve or otherwise shall be applied at least annually to the following in the following order of priority:

1. First, to pay the principal of and interest on the Bonds then due to the extent not provided from capitalized or accrued interest or from the assessment installments and interest. Interest used under this clause to pay the principal of and interest on the Bonds shall be applied before a withdrawal is made from the balance in the Bond Reserve.

2. Second, to pay all administrative and other expenses of the County associated with the Project, the Bonds or the assessments.

3. Third, prior to December 1, 2006, or such later date as in the opinion of nationally recognized bond counsel acceptable to the County will not adversely affect the exclusion of the interest on the Bonds from gross income for federal income tax purposes, to be used to pay costs of the Project.

4. Fourth, to provide any credit or refund then owed under subsection D of this Section.

5. Fifth, On August 1 of each year, commencing August 1, 2005, amounts which have been in the Bond Reserve at least fourteen (14) months shall be transferred to the Bond Fund created by the Bond Ordinance and applied pro-rata as a credit against the next assessment payment due on parcels whose payments are not delinquent and applied against any delinquency in the case of delinquent assessments.

C. Delinquent Assessment Reimbursement. If because of any delinquent assessment an amount is withdrawn from the Bond Reserve to pay the principal of or interest on the Bonds, and that assessment is later paid in whole or in part (or amounts are received at a foreclosure sale or otherwise as a result of enforcing the payment of the delinquent assessment), an amount equal to the amount necessary to restore the Bond Reserve to the Minimum Reserve Requirement, to the extent available from that payment of the delinquent assessment (including penalty and interest but after payment of costs of collection) shall be paid to the Bond Reserve from the payment of the delinquent assessment. The amount of any delinquent assessment remaining after restoring the Bond Reserve to the Minimum Reserve Requirement shall be applied as provided in the Bond Ordinance.

D. Refunds. Except as provided in the next succeeding sentence, at the time the assessment against any parcel of property is paid in full, that parcel of property shall be entitled to a credit equal to its pro rata share of the balance then in the Bond Reserve, and the

Minimum Reserve Requirement shall be recalculated to reflect the payment in full of that assessment. No credit shall be made to the extent the balance in the Bond Reserve after granting the credit would be less than the Minimum Reserve Requirement, as recalculated, but if this structure prevents the granting of all or a part of a credit, a refund in an amount equal to the credit that was not granted shall be made if and when money is available in the Bond Reserve to make the payment and as otherwise provided in Subsection B of this Section 2.7.

E. Use For Other Purposes. This section does not entitle property owners or any other person to a refund of amounts in the Bond Reserve and, notwithstanding anything in this Agreement to the contrary, the County is authorized to use amounts in the Bond Reserve for other purposes in connection with any refunding of the Bonds even if it reduces or eliminates any refunds that might otherwise be available to the property owners.

2.8 Waiver. The Developer agrees: (i) that all of the Property owned by it in the District is benefitted by the improvements proposed to be acquired and constructed in the District by an amount at least equal to the amount proposed to be assessed against those properties listed in the assessment roll attached as Exhibit H; and (ii) that the County may assess the Property in the amounts listed in the assessment roll. The Developer waives any and all formalities required by the laws of the United States and the State in order to impose such assessments. The Developer consents and agrees to the assessments listed in the assessment roll for the Property and agrees that, provided the Bonds are issued, those assessments must be paid regardless of whether any or all of the Project proposed to be constructed as described herein is in fact constructed or any provisions of Article 3 hereof are followed and agrees that the County may proceed to collect and enforce the assessments in the manner described herein and in the County Documents regardless of whether the Developer completes the acquisition or construction of the Project or complies with Article 3 hereof. The Developer waives all powers, privileges, immunities and rights as against the County or the District arising from or following from irregularities or defects, if any, occurring in connection with or ensuing from the actions, proceedings, matters and things heretofore taken or hereafter to be taken, had and done by the County, the Board and the officers of the County (including, without limitation, the proper description of all Property which the Developer may own within the District and the giving of proper notice of the proceedings relating to the District) concerning the creation of the District and the levying of special assessments to meet the cost and expenses of the Project in the

District. The Developer consents and agrees to be bound and consents and agrees that all Property in the District owned by the Developer be bound and be subject to the assessment lien as thoroughly and effectively as if all actions, proceedings, notices, matters and things had been taken and done free from irregularities. The Developer also represents and warrants that the market value of each parcel owned by it in the District on the date of execution hereof and the date the assessments are levied exceeds the amount of the assessment proposed to be made against each such parcel.

ARTICLE 3. MISCELLANEOUS.

3.1 Federal Tax Covenant. The Developer covenants that it will not take any action or omit to take any action with respect to the Bonds, the proceeds thereof, any other funds of the Developer or any facilities financed with the proceeds of the Bonds if such action or omission (i) would cause the interest on the Bonds to lose its exclusion from gross income for federal income tax purposes under § 103 of the Tax Code; or (ii) would cause interest on the Bonds to lose its exclusion from alternative minimum taxable income as defined in § 55(b)(2) of the Tax Code except to the extent such interest is required to be included in the adjusted current earnings adjustment applicable to corporations under § 56 of the Tax Code in calculating corporate alternative minimum taxable income. The foregoing covenant shall remain in full force and effect until the date on which all obligations of the County in fulfilling the tax covenant contained in the Bond Ordinance have been met.

3.2 County Documents. The Developer agrees to all provisions of the County Documents in the proposed form thereof on file with the County Clerk as of the date hereof. Any changes to or additions to the County Documents must be approved by the County and the Developer. This section does not require Developer approval of change in the County Documents if the Developer's aggregate land holdings in the District consist of land on which there are unpaid assessments which represent at the time of the change in the County Documents less than 40% of the aggregate unpaid assessments in the District.

3.3 Permits. The Developer hereby represents and warrants to the best of its knowledge after reasonable investigation that it has all governmental or other permits required to proceed with development of its Property and the Project and has paid all fees relating thereto and any other fees owing with respect to the Project, except as listed in Exhibit I. The Developer covenants that it will obtain those permits it does not now have and pay all fees due. There is no

impediment, to the Developer's knowledge, to proceeding with the Project to completion and proceeding with the development of the land owned by the Developer in the District.

3.4 Permitted Investments. Any funds invested by the County under this Agreement may be invested in any investment that would be lawful for the County under the provisions of Chapter 355 and 356 of NRS.

3.5 Indemnification; Insurance.

A. Indemnification To County. The Developer agrees to protect, indemnify, defend and hold the County, its officers or employees and agents and each of them harmless from and against any and all claims, losses, expenses, suits, actions, decrees, judgments, awards, attorneys' fees, and court costs which the County, its officers, employees or agents or any combination thereof may suffer or which may be sought against or recovered or obtained from the County, its officers, employees or agents or any combination thereof as a result of or by reason of or arising out of or in consequence of: (i) the acquisition, construction or financing of the improvements acquired by the County pursuant to this Agreement; (ii) any environmental or hazardous waste conditions (a) which existed on any of the property interests transferred to the County at any time prior to final acceptance of the Project by the County or which was caused by the Developer or (b) which existed on any of the property which is assessed at any time while the Developer owned the property or which was caused by the Developer, provided, with respect to both clauses (a) and (b) hereof said condition was not caused by the deliberate, reckless or negligent action of the County; or (iii) any act or omission negligent or otherwise of the Developer or any of its subcontractors, agents or anyone who is directly employed by or acting in connection with the Developer or any of its subcontractors, or agents, in connection with the Project. This Section 3.5 is not intended and shall not be construed to be a warranty of the construction, workmanship or of the materials or equipment incorporated in the Project; it being agreed that Developer's only warranty of such matters to the County is as stated in Section 1.1.

B. Defense of Suits. The Developer agrees that it shall at its sole cost and expense defend (including, without limitation, by paying the cost of attorneys selected by the County to assist in such defense) the County, its officers, employees and agents and each of them in any suit or action that may be brought against it or any of them by reason of the County's involvement in the Project and the financing thereof or any act or omission negligent or

otherwise against the consequences of which the Developer has agreed to indemnify the County, its officers, employees or agents. If the Developer fails to do so, the County shall have the right but not the obligation to defend the same and charge all of the direct or incidental costs of such defense including any attorneys fees or court costs to and recover the same from the Developer.

C. **Exception.** No indemnification is required to be paid by the Developer for any claim, loss or expense arising from the willful misconduct or gross negligence of the County or its officers or employees.

D. **Survival.** The provisions of this section shall survive the termination of this Agreement. It is not intended by the parties hereto that this indemnification provision revive any claim of or extend any statute of limitations which has run against any third party.

E. **Insurance.**

1. The Developer shall procure and maintain during the course of this agreement, general liability, auto liability, property, and other insurance as necessary to meet the financial obligations and liability of Developer assumed in this section. Said policies shall include coverage limits of not less than \$2,000,000 per occurrence. The County shall be added as an additional insured on all policies and certificates of insurance and endorsements for each insurance policy signed by a person authorized by the insured to bind coverage and shall be provided to the County prior to any work occurring after the execution of this Agreement.

2. The Developer shall also procure and maintain workers compensation insurance on each of its employees in accordance with the laws of the State and shall require that all persons with whom it contracts to perform any work in connection with the Project also procure and maintain that insurance for each person employed to perform work on or services for the Project.

3. All contracts entered into by the Developer for the completion of work or professional services required pursuant to this Agreement shall contain indemnification and insurance clauses to protect the County's interest. Said coverages shall meet or exceed County "Minimum Standards" as required in the design and construction agreements as if contracts were entered into directly with County. A copy of such County "Minimum Standards" may be obtained from the Regional Transportation Commission.

3.6 No Third-Party Beneficiaries. None of the provisions of this Agreement is intended to make any person who is not a party to this Agreement, including, without limitation, the subsequent owners of property assessed, the general public or any member thereof, a third party beneficiary hereunder or to authorize anyone who is not a party to this Agreement to maintain any suit pursuant to this Agreement for any reason, including, without limitation, any suit for personal injuries or property damage, except that the Applicable Governments are beneficiaries of the provisions hereof that specifically provide Developer obligations to those Applicable Governments.

3.7 No Guarantee of Water or Sewer Capacity. Nothing in this Agreement or any other document involving the District, nor the installation by way of the District of, or the assessment of the property within the District for, the water and sewage facilities shall be taken as a guarantee, promise or representation that water or sewage treatment capacity will be made available to the property in the District.

3.8 Continuing Disclosure. The County and the Developer agree to execute a continuing disclosure agreement or certificate in a mutually acceptable form prior to the issuance of the Bonds obligating each party to make certain disclosures on an ongoing basis as required under Rule 15c2-12 of the United States Securities Exchange Commission. If the parties are unable to agree on a form of agreement or certificate, the Bonds will not be issued unless they qualify for an exemption from Rule 15c2-12.

3.9 Successors; Assignments. This Agreement shall be binding upon and inure to the benefit of each of the County and the Developer and its respective successors and assigns. No assignment of this Agreement or any right or obligation hereunder by either party hereto shall be valid unless the other party hereto consents to such assignment in writing.

3.10 Inspection of Books. The County will permit the Developer to inspect its books and records pertaining to the District, including but not limited to, information relating to bond principal outstanding, interest disbursements, and balances of funds held by the office of the County Treasurer.

3.11 Entire Agreement. This Agreement, including the exhibits hereto, constitutes the entire agreement of the parties hereto, but nothing in this agreement affects the Deposit Agreement and the Development Agreement between the County and the Developer dated December 18, 2002 (the "Development Agreement"), except that Section 4.09 of the

Development Agreement is repealed. This Agreement may be modified by the parties hereto but only by a written instrument signed and acknowledged by each party and recorded with the County Recorder of the County.

3.12 Further Assurances. The Developer and the County agree to do such further acts and things and to execute and deliver to the other such additional certificates, documents and instruments as the other may reasonably require or deem advisable to carry into effect the purposes of this Agreement or to better assure and confirm unto the other party its rights, powers, and remedies hereunder. The Developer shall execute all consents, certificates and other documents which the County or bond underwriter reasonably request in connection with the sale of the Bonds.

3.13 Obligations of Developer. The obligations of the Developer under Articles 1 and 3 hereof are unsecured obligations of the Developer upon which the Developer is personally liable. The obligations to pay assessments in Article 2 pertain only to the land owned by the Developer in the District and are not personal obligations of the Developer.

3.14 Notices. All notices, demands, instructions and other communications required or permitted to be given to or made upon any party hereto shall be in writing and shall be personally delivered or sent by registered or certified mail, postage prepaid, addressed as follows:

If to the COUNTY:

Clark County, Nevada
County Manager
500 South Grand Central Parkway
PO Box 551111
Las Vegas, Nevada 89155-1111

If to the DEVELOPER:

Mountains Edge, LLC
c/o Focus Commercial Group, Inc.
3455 Cliff Shadows Pkwy., Suite 220
Las Vegas, Nevada 89129

If any notice hereunder is given to the County, a copy shall be forwarded by first class mail, postage prepaid, to the County's Director of Public Works, Chief Financial Officer and County Counsel at:

Director of Public Works
500 South Grand Central Parkway
PO Box 554000
Las Vegas, Nevada 89155-4000

20031015
.02945

Chief Financial Officer
500 South Grand Central Parkway
PO Box 551211
Las Vegas, Nevada 89155-4000

and

County Counsel
500 South Grand Central Parkway
PO Box 552215
Las Vegas, Nevada 89155-2215

If notice hereunder is given to the Developer, a copy should be forwarded by first-class mail, postage prepaid, to the Developer's counsel as follows:

Pillsbury Winthrop LLP
10250 Constellation Boulevard, 21st Floor
Los Angeles, California 90067
Attn: Lewis G. Feldman

3.15 No Waivers. No failure or delay on the part of either party in enforcing any provision shall operate as a waiver thereof, nor shall any single or partial enforcement of any provision hereof preclude any other or further enforcement or the exercise of any other right, power or remedy that either party may have.

3.16 Attorneys' Fees. If the County incurs attorneys' fees or expenses or any other fees and expenses in connection with the actual or overtly threatened breach by the Developer of any provision hereof or in enforcing the provisions hereof, the County shall be entitled to recover such fees and expenses from the Developer.

3.17 Severability. If any provision of this Agreement is deemed to be invalid or unenforceable, such invalidity or unenforceability shall not affect the remaining provisions hereof that can be given effect without the invalid or unenforceable provision and the County and Developer agrees to replace such invalid or unenforceable provision with a valid provision which has, as nearly as possible, the same effect.

3.18 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State.

3.19 No County Obligation. Nothing herein obligates the County to expend any money other than funds derived from the sale of the Bonds and amounts received from the investment thereof, amounts received under the Deposit Agreement, and receipts from the assessments made against the property in the District. Nothing herein obligates the County to

issue the Bonds; however, the obligations of the Developer hereunder (except as provided in the following sentence) are contingent on the issuance of the Bonds by the County. If the Bonds are not issued by June 1, 2004 for any reason, this Agreement may be terminated by either party, but the Developer shall be responsible for payment of all of the costs incurred by Developer and by the County prior to that date. The amount of such costs incurred by the County shall not be contestable or appealable, absent fraud or gross abuse of discretion. The Developer shall pay to the County the costs submitted in the County's statement within thirty (30) days after receiving notice of the amount of the costs.

3.20 Termination Date. Except as otherwise provided in Sections 1.1C3, 3.1 and 3.5 hereof, this Agreement shall be in effect from the date and year first mentioned above until the later of: (i) the date all of the Bonds and all bonds issued to refund any of the Bonds (including through a series of refundings) have been retired; or (ii) the date on which all of the assessments against the Property have been paid in full.

3.21 Counterparts. This Agreement may be executed on one or more counterparts, each of which shall be regarded as an original and all of which shall constitute the same Agreement.

3.22 Recordation. After this Agreement is executed in full, the County shall, within ten (10) working days, record this Agreement in the office of the County Recorder, after which this Agreement:

A. Is a binding obligation on all subsequent owners of the Property in the District pursuant to the terms hereof;

B. Is not extinguished by the sale of any Property on account of nonpayment of general taxes or any other sale of such Property; and

C. Is prior and superior to all liens, claims, encumbrances and titles other than the liens of assessment and general taxes.

3.23 Conveyance Restriction. The Developer agrees not to convey any parcel, lot or real property interest in the Property to any party until after this Agreement has been recorded in the office of the County Recorder.

3.24 Disclosure to Transferee. The Developer agrees to inform any transferee of the Property of the existence of this Agreement and the assessments and to obtain from any transferee who is known to the Developer to be acquiring a lot for development and resale a

covenant to make a similar disclosure to any subsequent transferee. A form disclosure statement, which the Developer agrees to use commercially reasonable efforts to have completed and signed by all purchasers of the Property hereto is attached as Exhibit J.

3.25 Execution Authorization. The persons executing this Agreement hereby state and acknowledge that they are authorized and empowered to do so on behalf of the party so designated.

3.26 Construction; Time.

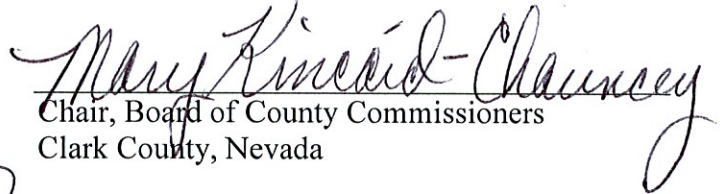
A. The language of this Agreement shall be construed as a whole according to its fair meaning and intent and not strictly for or against any party. Both parties were represented by counsel in the negotiation of this Agreement, and this Agreement shall be deemed to have been drafted by both of the parties.

B. Time is of the essence of this Agreement and all terms, provisions, covenants, and conditions hereof.

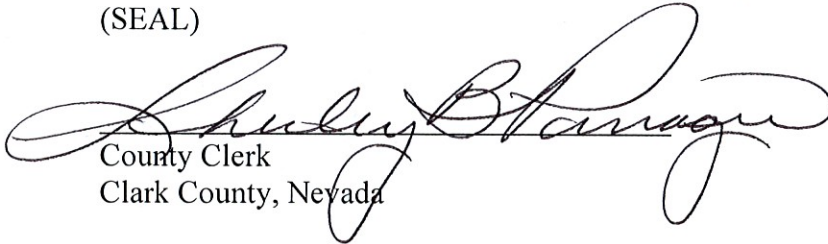
20031015
.02945

IN WITNESS WHEREOF the County and the Developer have caused this Agreement to be executed as of the day and year first mentioned above.

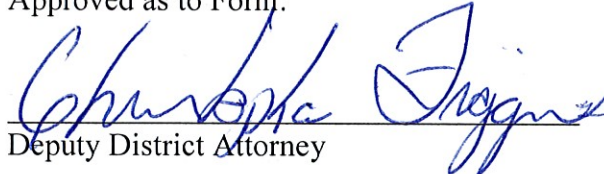
CLARK COUNTY, NEVADA


Chair, Board of County Commissioners
Clark County, Nevada

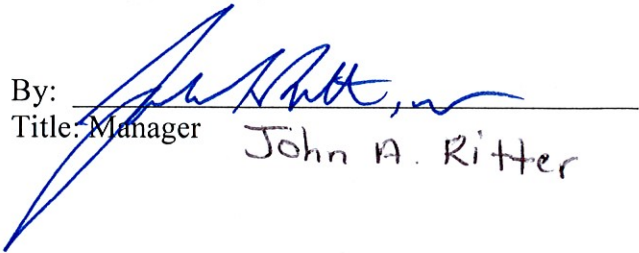
(SEAL)


County Clerk
Clark County, Nevada

Approved as to Form:


Deputy District Attorney

MOUNTAINS EDGE, LLC
By Holdings Manager, LLC

By: 
Title: Manager John A. Ritter

20031015
.02945

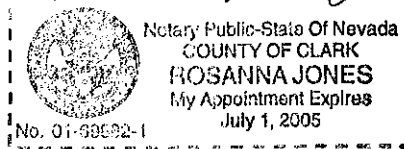
STATE OF NEVADA)
) ss.
COUNTY OF CLARK)


This instrument was acknowledged before me on October 7, 2003, by Mary Kincaid-Chauncey, as Chair of the Board of County Commissioners, Clark County, Nevada.

WITNESS my hand and official seal.

(NOTARY SEAL)

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)



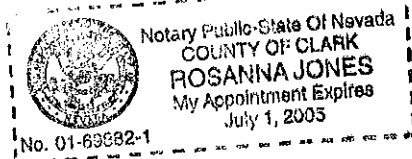


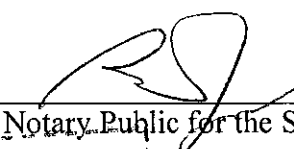
Notary Public for the State of Nevada

This instrument was acknowledged before me on October 7, 2003, by Shirley Parraguirre, as County Clerk, Clark County, Nevada.

WITNESS my hand and official seal.

(NOTARY SEAL)






Notary Public for the State of Nevada

20031015
.02945

STATE OF Arizona)
) ss.
COUNTY OF Yavapai)

This instrument was acknowledged before me on Sept. 23, 2003 by John A. Ritter as Manager of Holdings Manager, LLC, a Nevada limited liability company, which is Manager of Mountains Edge, LLC, a Nevada limited liability company.

WITNESS my hand and official seal.



Notary Public

(NOTARY SEAL)

My commission expires: _____



Notary Public State of Arizona
Yavapai County
Arthur A Smith
Expires August 22, 2005